



**U. S. Department of Transportation
Office of Inspector General**

AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

When federal agencies and programs lack appropriated funding, they must cease operations, except in emergency situations. When the President and Congress cannot reach agreement on funding measures government shutdowns have resulted, the longest of which was from December 16, 1995, to January 6, 1996. Government shutdowns have necessitated the furloughing of several hundred thousand federal employees and affect all sectors of the economy.

Causes of Federal Shutdowns

Shutdowns of the federal government have occurred in the past because of failure to pass regular appropriations bills by the October 1 deadline; lack of an agreement on stop-gap funding for federal government operations through a continuing resolution; and other impasses, for example, in 1995, the lack of an agreement on lifting the federal debt ceiling.

The Antideficiency Act (31 U.S.C. 1341, et seq.), as amended, prohibits the federal government from spending during lapsed appropriations, entering into contracts or other obligations, and providing government services and employees beyond those essential "to emergency situations, where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property." Emergency situations under which federal employees may work, without compensation, do not include ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property (31 U.S.C. 1342).

Effects of a Federal Government Shutdown

An immediate shutdown is the furloughing (placing in a temporary, non-duty, non-pay status) of federal employees. Exempted from furloughs are presidential appointees, Members of Congress, uniformed military personnel, and federal employees rated "excepted." Excepted employees, required to work during a shutdown, are those performing duties vital to national defense, public health and safety, or other crucial operations. Shutdown furloughs are not considered a break in service and are generally creditable for retaining benefits and seniority.

Federal Employee Health Benefit Program (FEHBP) benefits continue for a year in a non-pay status, and the government continues to be obligated for its share of their health plan premium. Employees may continue to pay their share while on furlough, or they may elect to have their premium costs accumulate and have them deducted from their pay in a lump-sum when they return to work.

Essential Services and Excepted Personnel

A 1980 Office of Management and Budget (OMB) memorandum defines essential government services and excepted employees as those:

- providing for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property;
- providing for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes;
- conducting essential activities only when a threat is imminent to life or property (1990 amendment), including:
 - medical care of inpatients and emergency outpatient care;
 - activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
 - continuance of air traffic control and other transportation safety functions and the protection of transport property;
 - border and coastal protection and surveillance;
 - protection of federal lands, buildings, waterways, equipment and other property owned by the United States;
 - care of prisoners and other persons in the custody of the United States;
 - law enforcement and criminal investigations;
 - emergency and disaster assistance;
 - activities that ensure production of power and maintenance of the power distribution system;
 - activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury; and
 - activities necessary to maintain protection of research property.

During the 1995-1996 and 2013 shutdown experiences, policymakers substantially followed these definitions. Pursuant to that memorandum and White House directions to agencies through OMB, agencies are required to determine which jobs fit these definitions and enumerate them in agency shutdown plans.

When determining which jobs fit these definitions, OIG also took into consideration the FY 2017 contingency plan of the U.S. Department of Justice, which states as a guiding principle: “The law enforcement capacity of the U.S. Government should not be impaired or perceived to be impaired. To do so could constitute an imminent threat to the safety of human life and the protection of property.” The excepted employees identified in this plan are needed to investigate allegations of fraud, abuse, and violations of criminal laws and administrative procedures arising from the conduct of Department employees, contractors and grantees; support law enforcement functions; oversee continuing operations maintained during furlough; and provide support for excepted personnel.

In addition to employees designated as excepted, the Inspector General as a Presidential Appointee is “Exempt” from furlough.

Therefore, the OIG has made the following designations:

1. Inspector General - Exempt
2. Criminal Investigators (1811s) - Excepted
3. Chief, Complaints Center - Excepted
4. Director of Human Resources – Excepted
5. Chief Information Officer (CIO) – Excepted
6. Help Desk Manager – Excepted
7. Supervisory Information Technology Specialist – Excepted
8. Information Technology Specialist (INFOSEC) - Excepted

Even those employees who are excepted will only work the hours necessary in order to ensure that critical functions continue. As circumstances change, additional employees may be considered to be excepted and will be called back to duty during the furlough period. Those employees designated excepted or called back to duty, although guaranteed to be paid retroactively, will not receive compensation until funding for the OIG is enacted.

Shutdown of Operations

The number of employees expected to be on-board before implementation of the OIG plan is approximately 414. The number of employees expected to be on board during the furlough are described above as exempt and excepted. OIG has designated approximately 105 employees as excepted, to continue mission critical functions as normal during a lapse in appropriations. In addition to the employees identified above, other critical employees and support staff may be called upon to perform operational duties if the need becomes critical and as conditions change. Non-excepted employees will be required to conduct an orderly shutdown.

The Process

- The Inspector General, or his/her designee, notifies all employees of the threat of a government shutdown in the event of the absence of appropriations when a shutdown appears imminent.
- The notification to authorize a furlough will not be communicated to the OIG until 12:01 a.m. on the day that the appropriation expires.
- Advance notice for this type of furlough (shutdown/emergency) is not required. Notice in the form of a memorandum will be made immediately to all agency employees via e-mail. Each notice will be sent requesting a read and delivery receipt. All employees should acknowledge receipt of this email during the designated shutdown period or upon returning to work. This is needed for the official record. The notification will be posted on the OIG website at <http://www.oig.dot.gov/furlough>.

- If the furlough goes into effect, all employees are required to report for duty to conduct an orderly shutdown. All paid leave or other paid time off is cancelled during a period when a lapse in appropriations is in effect. Up to four (4) hours will be provided to conduct an orderly shutdown. Shutdown activities may also be handled remotely. Employees will be compensated at a later date for up to four hours worked in order to conduct the orderly shutdown.
- Non-excepted employees who are in travel status will be required to return home as soon as practicable. When an employee returns promptly, the travel expenses that the employee incurs in the return are properly-incurred obligations (as part of the agency's orderly-shutdown activities), and they will be reimbursed for these travel costs after appropriations are enacted and are available for that purpose. If, however, an employee elects not to return promptly and, as a result of this decision, the employee incurs additional travel expenses, those additional travel expenses are not obligations of the agency, and will not be reimbursed.
- Employees may not work during the period covered by furlough (employees may not attend training, read e-mails, telework, volunteer their services, or work in any capacity). In fact, work by non-excepted employees is a violation of law subject to criminal penalties.
- In addition to the official notice of furlough, employees must check the OIG website at <http://www.oig.dot.gov/> for updated information while on furlough regarding when to return to work.